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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

DEVELL LAVON LINCOLN,

Plaintiff and Appellant,

v.

COUNTY OF SAN BERNARDINO et al.,

Defendants and Respondents.

E046069

(Super.Ct.No. RCV094494)

OPINION

APPEAL from the Superior Court of San Bernardino County. Keith D. Davis,
Judge. Affirmed.

Law Office of Rochelle Evans Jackson, Rochelle Evans Jackson; Law Offices of
Gloria Dredd Haney and Gloria Dredd Haney for Plaintiff and Appellant.

Ruth E. Stringer, County Counsel, and James H. Thebeau, Deputy County
Counsel, for Defendants and Respondents.

1. Introduction

This appeal involves claims for police brutality and related causes of actions based
on two sets of incidents. On February 7, 2004, plaintiff Devell Lavon Lincoln was

arrested by the California Highway Patrol (CHP) during a traffic stop. He maintains he was beaten by the CHP officers, Jason Lyman and M.V. Sais, during the arrest.

Afterwards, Lincoln was detained for 21 days at the County of San Bernardino's West Valley Detention Center until his release from custody on February 28, 2004. Lincoln maintains that the County defendants,¹ including two deputy sheriffs, subjected him to many forms of abuse between February 7, 2004, and February 26, 2004.

Lincoln appeals from a summary judgment granted in favor of the County defendants. His claims against the CHP are not the subject of this appeal, which involves only the County defendants.

Initially, the only legal issue raised by Lincoln on appeal involved the operation of Government Code section 945.3 (section 945.3) and its provisions for the tolling of the statute of limitations for an action against a peace officer. In the respondents' brief, the County defendants raise a number of other legal issues to which Lincoln responds in his reply brief. But we conclude the application of the appropriate statutes of limitations—Code of Civil Procedures section 335.1 and Government Code section 945.6—is dispositive. Based on our independent review, we affirm the judgment. (*Wiener v. Southcoast Childcare Centers, Inc.* (2004) 32 Cal.4th 1138, 1142; *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843-857.)

¹ The County defendants are the County of San Bernardino, West Valley Detention Center, Officer Steers, and Sergeant Trask. The latter two individuals are not identified by their first names in the record.

2. Factual and Procedural Background

The record reflects the following undisputed material facts.

After Lincoln was arrested and incarcerated, a felony complaint was filed, charging Lincoln with two counts of resisting arrest by the CHP. (Pen. Code, § 69.) A third count and an enhancement were added in November 2004. (Pen. Code, §§ 69 and 12022.7, subd. (a).) All three counts involved the CHP officers, Lyman and Sais. The criminal complaint did not involve the County defendants.

In March 2004, Lincoln filed separate governmental tort claims against the state and the County. In his claim against the County for damage occurring on February 7, 2004, Lincoln described his injury as follows: “Public officers working in the West Valley Detention Center[] physically battered and [severely traumatized] me from head to toe.” Defendants Steers and Trask were not identified. The County rejected Lincoln’s claim.

On September 27, 2004, Lincoln filed a civil complaint against the County, the West Valley Detention Center, and the CHP. Lincoln alleged he had suffered injuries during his arrest on February 7, 2004, and when he was admitted to the West Valley Detention Center. Defendants Steer and Trask were not named as parties in the September 2004 complaint. Other than February 7, no dates were mentioned. In July 2005, Lincoln dismissed the September 2004 case, pending the outcome of the criminal prosecution against him and involving the CHP.

In November 2005, the court declared a jury mistrial on the criminal charges against Lincoln. Subsequently, Lincoln pleaded guilty to one misdemeanor count of

resisting arrest (Pen. Code, § 148, subd. (a)(1)) and the other charges were dismissed on March 1, 2006.

In April 2006, Lincoln filed the present complaint, naming the County defendants and adding allegations based on conduct by Steers and Trask, occurring between February 7 and 26, 2004. Lincoln asserted eight causes of action against the various defendants: a claim for violations of Title 42, section 1983 of the United States Code (section 1983) against the CHP and two of its officers; a section 1983 claim against the County, Steers, and Trask; negligence against the CHP and the County defendants; false arrest and imprisonment, intentional infliction of emotional distress, assault and battery, and conspiracy against all defendants.

The trial court granted the County defendants' summary judgment motion based on the statute of limitations (Code Civ. Proc., § 335.1 and Gov. Code, § 945.6) and section 945.3.

3. Discussion

The general rule is that summary judgment is appropriate where “all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. . . .” (Code Civ. Proc., § 437c, subd. (c).) We consider ““all of the evidence set forth in the [supporting and opposition] papers, except that to which objections have been made and sustained by the court, and all [uncontradicted] inferences reasonably deducible from the evidence.”” (*Artiglio v. Corning Inc.* (1998) 18 Cal.4th 604, 612.) “In independently reviewing a motion for summary judgment, we apply the same three-step analysis used by the superior court.

We identify the issues framed by the pleadings, determine whether the moving party has negated the opponent's claims, and determine whether the opposition has demonstrated the existence of a triable, material factual issue.” (*Silva v. Lucky Stores, Inc.* (1998) 65 Cal.App.4th 256, 261.) If there is no triable issue of material fact, “we affirm the summary judgment if it is correct on any legal ground applicable to this case, whether that ground was the legal theory adopted by the trial court or not, and whether it was raised by defendant in the trial court or first addressed on appeal.” (*Jordan v. Allstate Ins. Co.* (2007) 148 Cal.App.4th 1062, 1071.)

In their motion for summary judgment, the County defendants asserted that Lincoln's action against them is barred by the applicable statutes of limitations, Government Code section 945.6 for the state law claims and Code of Civil Procedure section 335.1 for the federal claims. It is undisputed that, in the absence of tolling, the limitations period on all state claims ran on September 25, 2004, six months after the tort claim was denied. (Gov. Code, § 945.6.) The statute on the federal claims ran no later than February 26, 2006, two years after the latest alleged wrongful conduct. (Code Civ. Proc., § 335.1.) The filing of the April 2006 complaint runs afoul of both limitations periods.

Lincoln counters that, under section 945.3, the limitations periods were tolled during the pendency of the criminal case involving the CHP from February 10, 2004, until March 1, 2006. The County defendants argue the criminal case, which concerned Lincoln's arrest by the CHP, is not related to the claims arising out of Lincoln's subsequent detention by the County defendants. We agree.

With regard to tolling, section 945.3 provides: “No person charged by indictment, information, complaint, or other accusatory pleading charging a criminal offense may bring a civil action for money or damages against a peace officer or the public entity employing a peace officer based upon conduct of the peace officer relating to the offense for which the accused is charged, including an act or omission in investigating or reporting the offense or arresting or detaining the accused, while the charges against the accused are pending before a superior court.

“Any applicable statute of limitations for filing and prosecuting these actions shall be tolled during the period that the charges are pending before a superior court.”

Two purposes have been identified for section 945.3: “The avowed legislative objective . . . is to *prevent the filing of civil suits* in situations where their pendency might give the plaintiff an unfair advantage in defending against criminal charges.” (*Schmidlin v. City of Palo Alto* (2007) 157 Cal.App.4th 728, 756.) In addition to avoiding the use of a civil complaint as a bargaining chip in plea negotiations, the statute is intended to prevent “the use of civil discovery tools to probe the prosecution’s case in a related criminal matter.” (*Id.* at p. 758.)

In the present case, Lincoln was charged with three criminal offenses against the two CHP officers who arrested him. Any civil action by Lincoln against the CHP officers would be tolled for the duration of the criminal proceedings against Lincoln and involving them.

The County defendants, however, are differently circumstanced. Although the incident related to one of the criminal counts against Lyman purportedly occurred on the

premises of the West Valley Detention Center, Lincoln was not criminally charged based on any conduct involving the County defendants. He was only charged based on conduct involving the CHP. Therefore, there was no basis on which to apply the prohibition against a civil action as expressed in section 945.3 or its tolling provisions. (*Schmidlin v. City of Palo Alto, supra*, 157 Cal.App.4th at pp. 756-758.) Although Lincoln could not proceed with a civil action against the CHP, he was free to pursue a civil action against the County defendants, including the deputy sheriffs.

Lincoln insists there are disputed facts about whether—because the criminal proceedings were pending from February 10, 2004, until March 1, 2006—his detention by the County defendants was related to the criminal charges involving the CHP officers. But merely saying so does not make it true. In his deposition, Lincoln distinguishes between the separate conduct by the CHP officers and the County defendants. Nothing in the record demonstrates that the criminal charges against Lincoln, based on his offenses against the CHP officers, are factually related to what happened later between the County defendants and Lincoln when he was in jail. Because there are no disputed material facts, we determine as a matter of law that Lincoln’s complaint against the County defendants was time-barred.

We acknowledge the County could have made a number of other successful arguments based on the immunity provided under Government Code section 844.6; defects in the governmental tort claim; and the bar under *Heck v. Humphrey* (1994) 512 U.S. 477 presented by Lincoln’s criminal conviction. These issues were not adequately

addressed by Lincoln. But we do not reach them because the two statutes of limitations unquestionably apply.

4. Disposition

We affirm the judgment. As the prevailing party, the County defendants shall recover their costs on appeal.

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s/Gaut
J.

We concur:

s/Richli
Acting P. J.

s/Miller
J.